

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA .
vs. . H-10-CR-368
HOUSTON, TEXAS
NOVEMBER 10, 2011
10:14 A.M.
BARRY WALTER BUJOL, JR. .
.

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE DAVID HITTNER
UNITED STATES DISTRICT JUDGE
VOLUME 4

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General Order 94-15, United States District Court,
Southern District of Texas.

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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

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P R O C E E D I N G S

THE COURT: Please be seated.

All right. At the end of yesterday's business the government rested its case. Mr. Bujol, what's your pleasure? Do you desire to present any testimony in this case?

It's now -- it's now in your court. Now it's your side. The government has rested. It's now up to the defense. What's your position?

Are you going to testify or are you going to have any evidence you want to submit? You tell me what you are going to do. It's strictly up to you. This is a major crossroads in the case.

THE DEFENDANT: Yes, your Honor. With regards to testimony, I would greatly appreciate it if I had time to really think about such an important decision.

THE COURT: No, sir. The case is ready to go. You had all night long. It's been fully explained to you. You've had the ability of standby counsel.

Let the record reflect Mr. Mallett has been in this courtroom since day one. And I now need to know are you going to proceed in this case.

Remember, there's no obligation in a criminal case for a defense -- a defendant, or a defense counsel for that matter, to even ask one question, like you've had -- been able to do. It's -- fully, the burden is on the plaintiff.

1 Under the Fifth Amendment, you have an absolute right to remain
2 mute, not to say a thing at this time.

3 Let me tell you what will happen. If you're
4 ready to go, I have a few more instructions for you; and then
5 I'll ask you to proceed with, you know, your case. If the
6 answer is that, you know, you've completed, you know, your case
7 as far as you're concerned, you elect not to put any evidence
8 on -- which is your absolute right -- then at that point we're
9 going to go right to summation. "Summation" is to sum up the
10 case to the judge, and we'll see how much time each side needs.

11 The government will go first, and then you will
12 have the opportunity. But at that time, you cannot testify.
13 You just have to sum up the testimony that we've heard. Okay?
14 You can't testify, in effect, and tell your side of the case.
15 The -- so, let's say, for instance, that -- let's say, it's 20
16 minutes a side. I haven't decided yet. I don't know what you
17 want and what they want. Okay?

18 They can take all 20 minutes, and then you go, to
19 sum up the evidence that went in. More than likely, since
20 they've got the burden of proof, they may take 15 minutes and
21 stop, let you have all your time, and then they're entitled to
22 their last five minutes. So, that's where we're at right now,
23 either proceed with the defense case or, under the absolute
24 right that you have, that the defendant declines either to
25 testify or to submit any evidence.

10:17 1 Then, at that point, I'll give everybody, if you
2 want, just a few minutes to get some notes together; and we'll
3 have summation. And following that, there needs to be, of
4 course, a decision by the Court one way or another.

10:17 5 So, Mr. Bujol, what's your decision, sir?

6 THE DEFENDANT: I'm going to decline testimony.

7 THE COURT: All right. The defendant exercises his
8 absolute right not to testify or present any further evidence.
9 So --

10:17 10 THE DEFENDANT: However, I do want to present further
11 evidence.

12 THE COURT: How are you going to get it in? When I
13 say "how are you going to get it in," it needs to be some sort
14 of -- what is it -- some sort of predicate. But if you want to
10:17 15 get some evidence in, let's talk about it. But be careful now.
16 You're not to testify about anything. Anything. If the
17 evidence doesn't, what we say, speak for itself and it needs
18 some testimony on how to get in, then we're getting into, in
19 effect, testimony in the case. So, that warning is absolutely
10:18 20 clear.

21 All the evidence right now that's been submitted
22 and all of your documents are in. Okay? Are in, in the
23 record. But beyond that, if you elect to proceed, if you need
24 any background of your case, if you step over the line, they're
10:18 25 going to then be entitled to ask you questions. In other

1 words, let me give you -- let me give you the instruction that
2 I was going to give you, give you a little more time to think
3 about it. Okay?

4 It appears to me -- now, the government needs to
5 be in on this, also. And if you have any suggestions, we want
6 to keep this clean, so to speak, relative to the defense
7 position.

8 So, these were the instructions, Mr. Bujol --
9 let's say you elected to testify or you may change your mind.
10 These are the instructions that I was going to give to you.
11 Okay? And, so, then you determine if you want to step into the
12 defense case at all.

13 A defendant -- and this -- who takes the stand --
14 in other words, who elects to testify, waives any Fifth
15 Amendment privilege regarding cross-examination relevant to the
16 issues raised by your testimony. So, if all the documents
17 don't speak for themselves, that's testimony and they can then
18 ask you direct questions on that. Okay?

19 The next one is the breadth of the waiver. The
20 scope of the waiver of relevant cross-examination by the
21 government is to be -- that's -- this is how it's determined.
22 The extent of the cross-examination is within the discretion of
23 the -- in this case, the judge. In any event, it's the judge.

24 The Court -- the defendant may not claim the
25 privilege against cross-examination on any matters reasonably

1 related to the subject of his or her direct examination.
2 Meaning, we're talking about you cross-examine -- testifying
3 yourself relative to anything you're getting in. I want to
4 repeat that. This -- wait a second. I've got to lay this out
5 for you.

6 The defendant may not claim the privilege against
7 cross-examination on matters reasonably related to the subject
8 matter of the defendant's direct examination. There is no
9 direct examination of you, because you're doing it yourself, so
10 of your testimony or your basis for any piece of evidence.

11 Like any other witness, the defendant may have
12 his or her credibility impeached and/or the testimony assailed.
13 But that usually means that's within a reasonable scope. If
14 you start in with any kind of testimony, they can go into
15 credibility. And my understanding -- I'm looking at both sides
16 now -- that includes prior -- prior convictions or prior
17 problems and propensities.

18 Is that the understanding of the government?

19 MR. MCINTYRE: Yes, your Honor.

20 THE COURT: If it's not -- and it's not my
21 interpretation. We have standby counsel.

22 Is that your understanding also, Mr. Mallett, for
23 the record?

24 MR. MALLETT: My understanding is that if he testifies
25 he testifies for all purposes relevant to the case.

10:21

1

THE COURT: That's correct.

2

And the relevancy is determined by the judge as to the appropriateness of the questions they ask, if -- if you object to such questions from them later on, after you're done.

10:21

5

If a defendant testifies on his own behalf but refuses to answer relevant questions on cross-examination, the trial Court may properly advise, in effect the jury -- but advise the trier of fact that it may consider the defendant's refusal in assessing his or her credibility or, alternatively,

10:22

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the Court may strike the defendant's testimony in whole or in part. If the defendant has testified -- now, if you elect to testify, the government may comment on the defendant's refusal to answer proper questions during its closing argument.

14

Now, that's taken directly out of a major treatise that we all use. And I've done the best I can.

10:22

15

16

Now, once again, Mr. Bujol, do you elect to proceed at this time to any extent?

18

THE DEFENDANT: Your Honor, all I want to do at this time is to play the clips that are part of what's already the government's evidence.

10:23

20

21

THE COURT: You want to replay them?

22

THE DEFENDANT: No, I don't want to replay them. I -- they're -- they don't cover the entire scope of actual events that took place there. So, all I'm doing is playing the same recordings that were played and letting it speak for itself. I

10:23

25

1 don't have to give commentary or testify as to what the
2 recordings are saying. They're self explanatory.

3 THE COURT: Let me ask you this. Is it already in
4 evidence? Is all of that in evidence?

5 THE DEFENDANT: Yes, it's already in evidence.

6 THE COURT: Government agree?

7 MR. McINTYRE: Yes, your Honor.

8 THE COURT: All right. Now, what's your feeling on
9 that status, about limiting it to that extent? Play this --
10 it's in evidence; play the rest? It's in evidence; play the
11 rest?

12 MR. McINTYRE: I think that he would be entitled to
13 play video and audio that's already in evidence if he doesn't
14 comment or testify about it, Judge.

15 THE COURT: All right. Now, let me ask you this.
16 You're not going to play the whole thing, right?

17 THE DEFENDANT: No, sir.

18 THE COURT: You've got little bits and pieces.

19 THE DEFENDANT: Yes, sir. Yes, your Honor.

20 THE COURT: All right. Let's proceed that way.

21 Now, if you elect to -- I'm just mentioning it.
22 If you elect to elaborate on that, in effect, stop it and,
23 "See, that man here, he walked over there; and he didn't do
24 this," you're -- there you are. You've got your instructions.
25 If you do that, you're going to open it up.

10:24 1 So, at this point, government agree?

2 In other words, what portion, what small portion
3 of what clip do you want? Play it. What portion do you want?
4 Play it. Anything beyond that, opens it up. Do you agree?
10:24 5 Potentially opens it up. Do you agree?

6 MR. MCINTYRE: I agree, your Honor.

7 THE COURT: All right. Mr. Mallett, potentially it
8 could open it up; do you agree?

9 MR. MALLET: I think, in all fairness to the Court, I
10:24 10 do need to comment that the witnesses who testified previously
11 were examined by Mr. Bujol under the restriction he could only
12 question them about matters raised on direct. So, if he wants
13 to play clips about matters not raised on direct, then I
14 suppose he would ask questions of those witnesses now.

10:25 15 THE COURT: But the witnesses have all been excused.
16 Nobody was reserved here. So, he's got the clips that he would
17 like to play. Right now, we're at the clips he would like to
18 play. If he wants to go any further, then we can talk about
19 it. Okay? If he wants to go any further. So, right now, it's
10:25 20 just the clips that he wants to play.

21 MR. MALLET: Okay.

22 THE COURT: All right. Good.

23 Which one do you want?

24 How many do you have, by the way, so I can note
10:25 25 it down?

10:25

1

THE DEFENDANT: I don't have very many.

2

THE COURT: Okay. All right. Let's play the clips.

3

4

I guess if we're going to do that we might as well turn out that one light.

10:27

5

THE DEFENDANT: Your Honor, I do have one question.

6

THE COURT: Yes, sir.

7

8

THE DEFENDANT: With respect to if I say something just for the purposes of you knowing where to verify that this is from such-and-such date, is that considered --

10:27

10

THE COURT: No. Because we have to identify what exhibit it is. No, sir. That would be fine.

12

THE DEFENDANT: Okay.

13

14

THE COURT: So, what are we looking at? What's the first clip you want?

10:27

15

THE DEFENDANT: Well, your Honor, in the interest of time and convenience --

17

18

THE COURT: Don't worry about the time. That's why we're here. We're here to try the case.

19

10:27

20

THE DEFENDANT: Okay. This is from November 13th of 2009.

21

22

THE COURT: Where is it? Set the scene. You can do that for us. Where is it?

23

24

THE DEFENDANT: This is at the Waller County jail.

10:28

25

THE DEFENDANT: Yes.

10:28

1

THE COURT: Okay. Mr. McIntyre, what?

2

MR. McINTYRE: Your Honor, this is an audio-video that was not put in evidence actually.

4

THE COURT: Not what?

10:28

5

MR. McINTYRE: This was not put into evidence.

6

THE COURT: Was not put into evidence.

7

MR. McINTYRE: No.

8

THE COURT: All right. It's not in evidence.

9

10:28

10

However -- however, do you deny its authenticity or anything else? Aside from relevancy.

11

MR. McINTYRE: I assume it's something that we gave him, your Honor.

13

THE COURT: Is that where you got it?

14

THE DEFENDANT: Yes, sir. I have the disk here.

10:28

15

THE COURT: All right. Overruled. I'll let him play it.

17

MR. McINTYRE: Okay.

18

THE COURT: Okay. Go right ahead. Play it, please.

19

(Tape playing)

10:29

20

THE COURT: Is there any sound attached to it?

21

(Counsel confers with marshals to set speakers up for the defendant)

22

23

THE COURT: All right. Let's try it. We can fine tune it.

24

10:33

25

Yeah, move the microphone -- or move the speaker

1 as close as you can.

2 All right. Let's try it, shall we?

3 *(Tape playing)*

4 MR. McINTYRE: Your Honor, are we moving on to a
5 different piece of evidence?

6 THE COURT: Yeah. Hang on a second.

7 MR. McINTYRE: I don't know what he's plying.

8 THE COURT: Where are we now, Mr. Bujol? Where is
9 this from?

10 THE DEFENDANT: Your Honor, this is December 4th,
11 2009.

12 THE COURT: Okay. And where are the parties located?

13 THE DEFENDANT: The parties are in the car after the
14 defendant was bailed out of jail by the CHS.

15 THE COURT: Okay.

16 *(Tape playing)*

17 THE COURT: Okay. Next clip?

18 Before you play each one, just let us know what
19 the scenario is.

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Okay.

22 THE DEFENDANT: This is the same conversation, same
23 location and everything.

24 THE COURT: Okay.

25 *(Tape playing)*

1 THE COURT: A little louder, please. Can you get a
2 little more volume?

3 *(Tape playing)*

4 THE COURT: Mr. Bujol, we need a little more volume if
5 we can.

6 *(Tape playing)*

7 THE COURT: That's better. That's better.

8 *(Tape playing)*

9 THE DEFENDANT: Your Honor, same conversation, in the
10 car with the --

11 THE COURT: Again. It will continue.

12 THE DEFENDANT: -- CHS.

13 THE COURT: When it changes location, let us know.

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Let's assume that all these clips are from
16 the same occurrence in the automobile on the date you
17 mentioned.

18 *(Tape playing)*

19 THE DEFENDANT: Your Honor, this is a subsequent
20 meeting that occurred on December 23rd between the two parties.

21 THE COURT: December 23rd what year?

22 THE DEFENDANT: Of 2009.

23 THE COURT: All right. Remind me -- government,
24 remind me what was the day that he was arrested on the ship?

25 MR. MCINTYRE: It was May 30th, 2010.

10:58

1

THE COURT: 2010.

2

And this is December 2009?

3

THE DEFENDANT: Yes, your Honor.

4

THE COURT: Okay.

10:59

5

THE DEFENDANT: But before I go to that, I would like to go to the government's exhibit wherein the defendant discusses in an e-mail --

8

THE COURT: Uh-uh, don't tell me what's there. It's just discussing an e-mail. You start getting into the depths of that, you may open it up.

10:59

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11

THE DEFENDANT: Do I have to -- when you say "in the depth," if I read what is on the e-mail or what extent --

12

13

THE COURT: All we're doing is -- that e-mail you're looking at, is that in evidence?

14

10:59

15

THE DEFENDANT: Yes, your Honor.

16

THE COURT: All right. What's the date of it? What exhibit number?

17

18

The e-mail itself.

19

THE DEFENDANT: It should be Exhibit 113.

11:00

20

THE COURT: What is 113, please?

21

Is that it? You can go wherever you need to go. Is it a hard copy or a transcript? I guess I can look it up. Is it here?

22

23

24

MR. FEAZEL: I believe we can get a hard copy and direct you to where it is in our book.

11:00

25

11:00

1 THE COURT: What page is it?

2 THE CLERK: It's Volume 1.

3 THE COURT: Volume 1? All right. I've got it up
4 here. 113.

11:00

5 All right. 113, they're discussing hot
6 chocolate, right? Is that part of it? The difference between
7 "two" and "twelve"?

8 THE DEFENDANT: Yes, your Honor.

11:01

9 THE COURT: All right. So, you got a -- that's in
10 evidence. So, you want to just bring my attention to it or --

11 THE DEFENDANT: Yes.

12 THE COURT: -- you have some --

13 THE DEFENDANT: I'm just -- do I -- bringing your
14 attention to it --

11:01

15 THE COURT: That would be in summation. That would be
16 in summation, not in your part of the case. Unless you want to
17 offer evidence concerning that.

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. And that's what you want to play?

11:01

20 THE DEFENDANT: Yes.

21 THE COURT: All right. So, what we're listening to
22 today is you gave the date in December 2009, relevant to
23 Government's Exhibit 113, right?

24 THE DEFENDANT: Right.

11:01

25 THE COURT: All right. Play the part. Go on.

11:01

1

And is it in a vehicle also, sir?

2

THE DEFENDANT: Yes.

3

THE COURT: All right.

4

(Tape playing)

11:02

5

MR. McINTYRE: Your Honor, I think we just played this.

6

7

THE COURT: We just played it.

8

THE DEFENDANT: Yes. But you were speaking with the woman, and I presumed you may have overlooked it.

9

11:02

10

THE COURT: I didn't overlook it, but you've drawn my attention to it. If you want to play it again, how long is it?

11

12

I was talking to my case manager just about 30 seconds.

13

14

THE DEFENDANT: Okay. Case manager. My apologies.

11:03

15

THE COURT: No. It's all right.

16

THE DEFENDANT: It's just about 80 seconds.

17

THE COURT: Sure. Go on. Play it again.

18

(Tape playing)

19

11:05

20

THE DEFENDANT: I would like at this time to turn your attention, your Honor, to Exhibit 114. It's an e-mail dated December 15th, 2009.

21

22

THE COURT: Okay. 115 is in evidence, correct?

23

THE DEFENDANT: Yes. It's all in evidence.

24

THE COURT: It's in the book.

11:06

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THE DEFENDANT: Yes, your Honor. 114.

11:06 1 THE COURT: I thought you said turn my attention to
2 115.

3 THE DEFENDANT: No. It was -- I said -- I'll repeat
4 that -- 114 dated December 15th, 2009.

11:06 5 THE COURT: Oh, yes. By the way, you don't have to
6 reference anything like that. What I need you to do is give me
7 whatever evidence you want in that has not been played. So,
8 that's what we are looking at. As long as it's in here for the
9 record, your -- it's in the record. I noted that document.

11:08 10 THE DEFENDANT: We're going to move forward to the --
11 back to the meeting in the car, same conversation. This is --
12 or this is a subsequent conversation to the day the defendant
13 was bailed out of jail by the CHS.

14 THE COURT: All right.

11:08 15 THE DEFENDANT: December 23rd, 2009.

16 *(Tape playing)*

17 THE DEFENDANT: Your Honor, I would like to mention it
18 for the record that refers to --

19 THE COURT: Uh-uh. If you're going to do that, you're
11:10 20 opening it up.

21 THE DEFENDANT: Oh, yes. Yes. Okay.

22 May I ask a question?

23 THE COURT: Yes, sir.

24 THE DEFENDANT: If I'm referring to the page in the
11:10 25 transcript --

1 THE COURT: You can do that, sure.

2 THE DEFENDANT: Okay. It's referring to Page 26
3 through 27 in the transcript.

4 THE COURT: All right. Because I was expecting you to
5 tell me what it refers to and give me some interpretation.

6 THE DEFENDANT: Oh, no. No, your Honor.

7 THE COURT: All right. That's fine. I'm glad we got
8 it in the record.

9 THE DEFENDANT: This is the same conversation; and
10 it's Page 7 of the transcript, starting at Page 7 of the
11 transcript.

12 *(Tape playing)*

13 THE DEFENDANT: Your Honor, I would like to direct
14 your attention to Exhibit 93.

15 THE COURT: All right. That's looks like an e-mail
16 with a number of websites, correct?

17 THE DEFENDANT: No. There should be something about
18 admittance to a group and Hijrah_Islam.

19 THE COURT: Oh, where it -- oh, you want the first
20 sentence, "The moderator of the Hijrah_Islam group has approved
21 your request for membership," correct?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Is that what you want me to
24 note?

25 THE DEFENDANT: Yes. As with the subject of that

1 e-mail.

2 THE COURT: Yeah. They provided you with some
3 websites.

4 THE DEFENDANT: Yes. And I would also like to turn
5 your attention to Exhibit 94.

6 THE COURT: All right. This is from you. Let me just
7 read it.

8 All right. It's about your background. I've
9 read it. What else?

10 THE DEFENDANT: I believe it's Exhibit 96.

11 THE COURT: All right. I've got some questions about
12 that, but I cannot ask you. I've looked at it, and I've noted
13 it. That's the best I can do right now within the limits of
14 your not being subject to questions. Because if I start
15 questioning you -- I just keep out of that. So -- I need to.
16 And the government has a right to no questions being asked,
17 because then they'll start following up. So, I've noted it.

18 And, for the record, all of the exhibits in
19 evidence I will note and I will reference them before a
20 decision is made in this case.

21 Now, on something like this, Mr. Bujol, you
22 wanted me to note something, that's more summation than your
23 case. When you get into summation, we'll set the time frames;
24 and I'll keep a timer up here. I actually have a chess timer
25 that I use. Okay? And I'll let you know how the time is

1 going.

2 Basically what you're doing in a number of these
3 things is more summation of the case, for me to consider as
4 to -- because in summation you can state that -- that's what
5 their burden is and they have not met their burden because of
6 A, B, C, D, and E. So, what you are putting forward here is
7 bordering on summation; but I'm allowing you to do it. Okay?

8 Just keep in mind you have time to sum up the
9 case. So, this is your part -- in other words, if you want
10 testimony within the boundaries that you have set, I'll be glad
11 to consider it. But by my noting an exhibit abstractly, just
12 like you want me to note that exhibit, that's summation. As
13 you say, they can -- for instance, in summation, you can say,
14 "They said A, B, C, and D. But look in the book, on page -- on
15 exhibit number so-and-so and, you know, that contradicts what
16 they just said." Now, that's arguing the case like a lawyer.

17 What you are doing now is more like summation
18 than putting on your version of what went on. That's what
19 really the defense case would be about. And you can, in
20 effect, through your testimony try to punch a hole in what they
21 say. You can't comment on it -- or you can take the stand or
22 whatever you need to do. I just want to mention that to you.

23 But I noted it. But if I feel it's more
24 summation than your case, I'm going to let you know and ask you
25 to move on. But you'll have opportunity to do that sort of

11:18 1 stuff in summation. You'll bring my attention to certain
2 exhibits.

3 *(Tape playing)*

4 THE DEFENDANT: Your Honor, I would like to reflect
11:18 5 this does contain Arabic, Arabic being spoken by the defendant.

6 THE COURT: Right.

7 THE DEFENDANT: And it corresponds to Page 8, starting
8 in the transcript of December 23rd, 2009.

9 THE COURT: All right.

11:19 10 *(Tape playing)*

11 THE DEFENDANT: This is the -- corresponding with
12 Page 12, beginning at Page 12 in the transcript.

13 THE COURT: All right.

14 *(Tape playing)*

11:25 15 THE COURT: Hold it one second.

16 *(Court confers with staff)*

17 THE DEFENDANT: Your Honor, at this time I'm going to
18 move to a subsequent meeting that occurred on January 20th of
19 2010. And this is -- I believe it's in the car.

11:29 20 Yes, it should be in the car.

21 But first, I have here a copy of the transcript.
22 And this -- it -- I would like to read a portion of the
23 translator's notes, the person who created this document. And
24 it talks about -- it's on Page 1 of the document. And it
11:30 25 says --

11:30

1 THE COURT: Hold it.

2 Before he reads from it, what's the government's
3 position? Is this transcript primary or the secondary
4 evidence?

11:30

5 MR. McINTYRE: It's in evidence, your Honor.

6 THE COURT: Is it primary evidence? In other words,
7 how many --

8 How much are you going to read from it?

9 THE DEFENDANT: I'm just going to read a sentence.

11:30

10 THE COURT: All right. Just tell them where it is.
11 Because there's always a question, remember, in cases where
12 there are transcriptions as to what's primary and what's
13 secondary evidence. And I gave an instruction so if a jury was
14 in the box -- I don't have to do it to myself.

11:31

15 MR. McINTYRE: Right.

16 THE COURT: But, basically, remember transcripts are
17 secondary evidence even though it is evidence. But primary
18 evidence is the actual recording itself.

19 THE DEFENDANT: Okay. This page is --

11:31

20 THE COURT: What page?

21 THE DEFENDANT: It's just a generic page. It's on
22 every transcript. It's just a --

23 THE COURT: All right. Read it, then. What does it
24 say?

11:31

25 THE DEFENDANT: It has a list of Arabic terms, one of

11:31 1 which is "hijrah." And it says -- and they're defining the
2 Arabic terms for a non-Arabic person or a person who speaks
3 Arabic. And it says, "hijrah," then a dash, "the flight of
4 Prophet Muhammad from Mecca to Medina. In this conversation,
11:31 5 it refers to the act of fleeing from danger or from the land of
6 sin."

7 THE COURT: All right. Now play what you need to.

8 *(Tape playing)*

9 THE DEFENDANT: And forgive me, your Honor, but I do
11:32 10 have to remind myself that because there is Arabic in here I
11 would like to give you this begins at Page 6 of that
12 transcript.

13 THE COURT: Okay.

14 THE DEFENDANT: This particular clip here.

11:32 15 THE COURT: Okay.

16 *(Tape playing)*

17 THE DEFENDANT: Okay. Your Honor, I'm going to go to
18 Page 5 of that same transcript.

19 THE COURT: All right.

11:38 20 *(Tape playing)*

21 THE DEFENDANT: Your Honor, this is that same
22 conversation, beginning with Page 26 of the transcript.

23 *(Tape playing)*

24 THE DEFENDANT: Your Honor, this is Page 27, same
11:44 25 transcript.

11:44 1 (Tape playing)

2 THE DEFENDANT: Starting at Page 28.

3 (Tape playing)

4 THE COURT: All right. It's now 10 minutes to 12:00.

11:49 5 We'll take our first break. I want the record to reflect we're
6 listening to bits and pieces from the stacks of transcripts and
7 the stacks of disks. However, I do want to note that Mr. Bujol
8 is just flipping through the transcripts and putting various
9 pieces on that we're all considering.

11:50 10 I do want to mention, however, I'm going to ask
11 Mr. Bujol during this break to tighten it up and let's move it
12 along. In other words, you're here in court. Go through, put
13 it on, take it off, put it on, take it off, put it on, take it
14 off. And I want to move quicker than just flipping through
11:50 15 almost ahead of time just as one segment is on, flipping
16 through as to what might be relevant in the defendant's
17 opinion.

18 All right. We'll take a break. It's 11:51.
19 We'll take a break to 12:10, and then we'll keep moving.

11:50 20 Let me ask this marshal here. I think we got a
21 scout in the back. Okay? If you want to bring him in my
22 waiting room, I'll be glad to visit with him for a moment.
23 Okay?

24 All right. So, we'll see you back in a little
11:50 25 less than 20 minutes.

11:50 1 *(Recess was taken)*

2 THE COURT: Thank you. Be seated.

3 By the way, you can sit on either side. We have
4 a couple of guests there or whatever. Don't be hesitant if you
12:15 5 want to shift either way, left or right.

6 Let me see Ellen for a minute, please.

7 *(Court confers with staff)*

8 THE COURT: All right. Let's continue, Mr. Bujol,
9 please.

12:15 10 THE DEFENDANT: Before I go to the next clip, I would
11 like to draw your attention to -- I believe it's 237, an e-mail
12 dated April 27, 2010.

13 THE COURT: All right. It's noted. Go right ahead,
14 sir.

12:16 15 THE DEFENDANT: I'm going to go to February 8th, 2010,
16 a conversation after the defendant completed the first
17 dead-drop.

18 *(Tape playing)*

19 THE DEFENDANT: This corresponds beginning with
12:17 20 Page 34 of the transcript.

21 *(Tape playing)*

22 THE DEFENDANT: We'll go next to February 21st, 2010.
23 This is in the car, at a parking lot of -- between a restaurant
24 and an Academy shoe store.

12:20 25 *(Tape playing)*

1 THE DEFENDANT: This is Page 11.

2 *(Tape playing)*

3 THE DEFENDANT: Same transcript, Page 15.

4 *(Tape playing)*

5 THE DEFENDANT: Your Honor, I'm going to go to
6 February 22nd, the very next day after the dead drop meeting.
7 In the car -- in the parking lot of Starbuck's Coffee.

8 THE COURT: Thank you.

9 THE DEFENDANT: I need to make a correction. Before I
10 do that, your Honor, I would like to point your attention to an
11 audio recording of the defendant's, recovered from his laptop
12 seized at his apartment the night of his arrest. And it's just
13 a short clip. I'll go right to it.

14 MR. McINTYRE: Objection, your Honor. It's not in
15 evidence.

16 THE COURT: It's not in evidence. All right. So, you
17 can't go there. It's not in evidence. Unless you want to open
18 up a full case and start admitting evidence.

19 *(Tape playing)*

20 THE COURT: Hold it. Hold it. Are you playing that
21 one --

22 THE DEFENDANT: Yes, your Honor. I just returned back
23 to the original recording I was set to play, in the parking lot
24 of Starbuck's.

25 THE COURT: Okay. Yes. Go right ahead.

12:32 1 (Tape playing)

2 THE DEFENDANT: Again, to be clear, this starts at
3 Page 16.

4 THE COURT: All right. Let's go.

12:33 5 MR. McINTYRE: Your Honor, I would like to read in a
6 portion of that record that follows, the very next page, under
7 the rule of optional completeness.

8 THE COURT: Under the rule of optional completeness,
9 yes, what -- how does it continue, please?

12:33 10 MR. McINTYRE: "I mean, what -- so, not only is
11 freedom of speech is -- even if you heard it, you're guilty."

12 THE COURT: Who's speaking?

13 MR. McINTYRE: That's the source, your Honor.

14 THE COURT: Okay. The confidential source?

12:34 15 MR. McINTYRE: Yes.

16 THE COURT: Start again, please.

17 MR. McINTYRE: The source stated, "I mean, what -- so,
18 not only freedom of speech is, even if you heard it, you're
19 guilty."

12:34 20 And then the defendant replies, "That's the
21 point. And that's why, when I told you my situation, I didn't
22 see -- I didn't realize myself how tight they were. I thought
23 just -- look, I haven't done anything wrong. I have a
24 legitimate excuse. Maybe I have hidden intentions, but I
12:34 25 haven't told anyone that. Now, yes, I gave the Friday sermon,

1 which may have caused a problem and I may have said things
2 amongst people."

3 THE COURT: Okay. Thank you.

4 You may continue, Mr. Bujol.

5 All right. I'm going to make a statement
6 relative to we have electronic court reporting and it does --
7 can record the time of these lapses. It doesn't very often --
8 it doesn't appear generally in the transcripts, but there is a
9 timing mechanism. And I wanted to note, in my mind, it's
10 getting to be exceedingly long pauses between the excerpts that
11 are going on the screen.

12 And I'm not telling Mr. Bujol yet to move it
13 along, but it's got to move along. We've got to tighten it up.
14 And I checked with the court reporter. There is a timing
15 mechanism, and I'm determining the time is coming close between
16 these excerpts that are much too long.

17 So, I don't want the whole courtroom and all of
18 the staff just sitting here in silence as Mr. Bujol hunts, you
19 know, as to the exact little snippets that he needs. But I'll
20 give him some leeway at this time.

21 So, go right ahead, sir. Next point. Where are
22 we?

23 THE DEFENDANT: Okay. I'm just going to -- just in
24 the interest of time and our previously committed deadline of
25 approximately 1:45 --

1 THE COURT: No. We have -- don't worry about the
2 deadline 1:45. We can always hold over. We have some days
3 next week if we have to. Nobody is in any rush, and I didn't
4 mean to state that for a rush. I'm just talking about court
5 operations. But we're in absolutely no rush, Mr. Bujol. But
6 your point, you may move along or whatever your next point is.
7 Let's go.

8 THE DEFENDANT: Yes. This is from a meeting, the last
9 meeting before -- the night the defendant was arrested. It's
10 in a parking lot of a Pizza Hut in Navasota, Texas, between the
11 two parties.

12 *(Tape playing)*

13 THE DEFENDANT: I should state for the record that it
14 corresponds to Page 12 in the transcript.

15 THE COURT: Thank you.

16 *(Tape playing)*

17 THE DEFENDANT: At this time, your Honor, I don't have
18 any further exhibits to produce.

19 THE COURT: All right. Let me ask you this, then.
20 Does the defense -- the government rested its case, and you put
21 your excerpts on. Does -- the government rested its case.
22 Does the defense rest its case?

23 THE DEFENDANT: I'll say yes, your Honor.

24 THE COURT: All right. Defense rests.

25 Any rebuttal by the government?

1 2 : 4 0 1 MR. McINTYRE: No rebuttal, and the government closes.
2 THE COURT: All right. How much time -- do you want
3 to take --
4 MR. McINTYRE: Yeah, if we could take --
1 2 : 4 0 5 THE COURT: Take the video down, please.
6 All right. Let's turn the lights on, please.
7 All right. How much time does the government
8 want for summation?
9 MR. McINTYRE: Fifteen minutes would be fine, your
1 2 : 4 0 10 Honor.
11 THE COURT: All right. And, defense, how much time do
12 you want, sir? Is that sufficient time, also?
13 THE DEFENDANT: That's sufficient.
14 THE COURT: All right. It's now 12:41. I'm just
1 2 : 4 1 15 going to sit up here if you want to get your notes together.
16 We'll go right into summation. So, I'll be sitting right here
17 and -- for five minutes.
18 And if you need to get -- I'm not even getting in
19 the back. I get in the back there, somebody is going to call
1 2 : 4 1 20 me. But we will then immediately proceed to summation.
21 So, we're going -- Mr. Bujol, the government,
22 we're going off the record for five minutes. And if everybody
23 is ready sooner than that, fine. But let's get everything
24 ready to go. Okay?
1 2 : 4 1 25 MR. McINTYRE: Yes.

1 THE COURT: For summation.

2 And, of course, now I am going to -- what I will
3 do is this. I will give each side a two-minute warning before
4 your 15 minutes are up. Okay?

5 Now, remember the government can stop whenever
6 they want. You need to take at least half of that time on your
7 opening. And you can reserve some time. They've got the
8 burden of proof; so, they'll go first. Then they'll stop.
9 Then you may go for your full 15 minutes. And then, whatever
10 time they have left on the clock, that's it. All right?

11 So, let's go off the record for a few minutes.
12 And everybody just remain in the courtroom. And as soon as a
13 few minutes have gone past and you put everything together,
14 we'll be ready to wrap it up.

15 Thank you. So, off the record.

16 *(Recess was taken)*

17 THE COURT: Okay. Everybody ready?

18 MR. McINTYRE: Yes, your Honor.

19 THE COURT: All right. Ready to get on.

20 MR. McINTYRE: Do you want me to argue from here, your
21 Honor?

22 THE COURT: Wherever you're most comfortable.

23 MR. McINTYRE: Yes.

24 THE COURT: Just for the purposes of certainly this
25 here, Mr. Bujol, you can make your argument right from your

1 chair there when your time comes.

2 All right. Hang on a second.

3 All right. What sort of notice do you want, when
4 how much time is left?

5 MR. McINTYRE: When there's five minutes left, your
6 Honor.

7 THE COURT: Five minutes left. You have 15 minutes,
8 and you want a five-minute notice. All right? Five minutes'
9 left notice.

10 All right. Start your summation, please,
11 counsel.

12 MR. McINTYRE: May it please the Court.

13 Your Honor, the evidence in this case regarding
14 Mr. Bujol is that he is a radicalized jihadi terrorist that
15 just happens to be born in the United States. He was a
16 follower and a disciple of Anwar al-Awlaki, one of the world's
17 most well-known terrorists, publicizers, and radicalizers of
18 American jihadis.

19 The evidence in this case, your Honor, is that
20 the defendant, when he left -- or attempted to leave in
21 February and March of 2009, was intending not to go to language
22 school. He never had any intention of going to language
23 school, but in fact was going overseas to aid al-Qaeda in the
24 Arabian Peninsula.

25 The evidence in this case is replete and the

1 transcripts are replete with statements from the defendant's
2 own mouth that, when he attempted to make what he called
3 "hijrah" to Yemen, that the Islamic school -- or it was simply
4 a ruse. He called it a "legitimate excuse." He told the
5 source that he had hidden intentions. And those hidden
6 intentions were that he was going to join al-Qaeda in the
7 Arabian Peninsula and commit terrorist acts against the United
8 States and others.

9 Before the defendant in this case ever met the
10 confidential source in November of 2009, he had already been
11 radicalized through the Internet by Awlaki and others. The
12 Court has seen the contents of his e-mails: the Juba Sniper
13 video, which he e-mailed to himself, which showed American
14 soldiers being murdered in Iraq; the list of sites that were
15 described by the government expert, one of which was the
16 original or official site of al-Qaeda.

17 He also had, with the moniker "check this out,"
18 one of the original al-Qaeda in Yemen videos that he had sent
19 to himself. There's a multitude of this type of jihadist
20 thought that occurred way in advance of the FBI introducing a
21 confidential source in this case.

22 Once the -- once the confidential source was
23 introduced in this case, there was no coercion from the
24 government. There was no subterfuge. There was no
25 unreasonable actions on the part of the government. The fact

1 is this defendant was predisposed to go fight for al-Qaeda in
2 the Arabian Peninsula. And the confidential source in this
3 case simply offered him a vehicle to get overseas and do what
4 he always wanted to do, which is commit jihad.

5 On two occasions during the meetings between the
6 confidential source and the defendant, the confidential source
7 flatly tells the defendant that he is a member of al-Qaeda in
8 the Arabian Peninsula. And the defendant's response is, "God
9 willing" and "God bless."

10 The recordings also show that he was told the
11 night -- the night that he was arrested, on May the 30th, that
12 he would be sent to a safe house, he would then go to Yemen.
13 And he was actually told by the confidential source that he
14 would be trained to shoot. There's nothing that shooting has
15 to do with language school. He was flat out told that he was
16 going to be taught to shoot.

17 And the best evidence of this case, regarding
18 what the defendant's true intentions are, is the hidden video
19 that he left for his wife. He, of course, did not intend for
20 this video to be seen by anyone but his wife, never expected it
21 to be played in court. And, therefore, he was very honest
22 about his intentions. He flat out says, "I met a brother who's
23 a member of al-Qaeda in the Arabian Peninsula," described him
24 as someone that changed his life. And then he goes on to
25 define the terms that are at dispute in this case or that he

1 would like to have the meaning that's less than what it really
2 is, "hijrah." He puts up "hijrah." What's his definition of
3 "hijrah"?

4 He put this presentation together, went out and
5 found two photographs of two known terrorists and superimposed
6 the word "hijrah" on there, Jihad Jane and Zazi, both people
7 that traveled overseas to train, one of which committed
8 terrorists acts overseas and one of which came back to the
9 United States to commit terrorist acts.

10 He has a picture which is called the "iconic
11 picture" of the al-Qaeda in the Arabian Peninsula leaders, all
12 four of them sitting next to a rocket propelled grenade. All
13 four of those were identified in this case as the four top
14 leaders of al-Qaeda in the Arabian Peninsula. He puts the
15 letters -- or superimposes the letters "AQAP" over the leaders
16 of al-Qaeda in the Arabian Peninsula. He chose the photograph;
17 he chose the letters that went over it.

18 He has a picture of jihad. And, once again, he
19 has superimposed a picture of jihad over a picture of Osama bin
20 Laden. In this video, he demonstrates that his view of hijrah
21 is terrorist acts, his vision of jihad is Osama bin Laden's
22 vision of jihad and that he certainly knows -- the defendant
23 certainly knew that the confidential source was a member of
24 al-Qaeda in the Arabian Peninsula, because he was told twice
25 and then he put it in his own video that that's what he was a

1 member of.

2 Ultimately, it ended on May the 30th, with him
3 actually going through the items that he was going to take to
4 Abu Bakr, who was represented to be an AQAP representative that
5 would meet him once he arrived in Algeria. He loaded on the
6 boat. He was given every opportunity not to get on the boat.
7 They let him sit in the room for a little while, let him think
8 about it. He never had any doubts. And, in fact, the source
9 said, when he dropped him off, he didn't even give him a hug or
10 say goodbye, he just jumped right on the boat.

11 So, we think the evidence in this case, your
12 Honor, is very clear that the defendant is guilty of the charge
13 in Count 1.

14 Secondly, you also heard evidence from the agents
15 in this case that they created a false TWIC identification card
16 that the defendant picked up from a dead-drop zone underneath a
17 rock. In the defendant's own statement, he admitted the card
18 was fake and the name was fake. Not only did he present it to
19 gain access to the port, but even after he was arrested, even
20 after the gig was up, he told the HPD officer who was
21 transporting him back to the FBI that he was, in fact, Paul
22 Mexia, which is the fake name that's on the TWIC card.

23 So, we would ask the Court to find the defendant
24 guilty of Counts 1 and 2, your Honor.

25 THE COURT: All right. You've used seven minutes and

1 20 seconds. It's now Mr. Bujol's opportunity.

2 Go right ahead, sir. Sir, you've got 15 minutes.

3 THE DEFENDANT: Your Honor, I would like to object and
4 say that the government has failed to prove its case with
5 regards to the defendant's intentions to fight for al-Qaeda in
6 the Arabian Peninsula.

7 THE COURT: All right. You needn't object. Your
8 position is --

9 THE DEFENDANT: My position --

10 THE COURT: -- that they failed to prove it, correct?

11 THE DEFENDANT: My position is, your Honor, yes,
12 they --

13 THE COURT: I can't practice law, but I want you to
14 phrase it that way because that's what we're looking at.

15 THE DEFENDANT: Okay.

16 THE COURT: Okay? That they failed to prove it. Why?

17 THE DEFENDANT: They failed to prove that I wanted to
18 be a fighter for this organization. The record and the
19 evidence will indicate that I did, in fact, make efforts to
20 follow up on my goals of making hijrah to attend language
21 schools. Because -- and the record will also show that just
22 saying you want to relocate to a Muslim country is not a
23 legitimate excuse. The record will reflect that.

24 It is not -- it is illegitimate, in other words,
25 as if a person just comes to the United States. You can't do

12:54 1 that. You have to have a legitimate reason for coming to this
2 country. And being that the defendant wanted to exercise
3 his -- living in a Muslim country, you also need a legitimate
4 excuse. And that legitimate excuse was also his desire,
12:54 5 anyway. And the defendant, as is indicated in the evidence,
6 repeatedly expressed that.

7 However -- and the defendant drew conclusions,
8 that are indicated in the record, which may or may not have
9 been accurate. He may have been mistaken, but he sincerely
12:55 10 thought that his prior two arrests were the subject of
11 anti-Muslim sentiment. He may have been wrong, but he
12 sincerely thought that. And as a consequence, he became, as
13 the record will show, more paranoid and more secluded and more
14 desirous to leave and, as a result of that, was eager to accept
12:55 15 the assistance of someone who had or had presented himself as a
16 person of dubious affiliations.

17 The defendant did not intend, as the record will
18 show, to provide this person and the organization with material
19 information. In fact, the defendant sent documents he knew
12:56 20 they were old. And in one e-mail in the record he said
21 "alhamdulillah" -- "praise to Allah" -- "I thought those
22 documents were old." He knows it, and he isn't -- he's not
23 concerned about it.

24 Further, he sends the CHS a public document with
12:56 25 a clear disclaimer stating that this is not official army

12:57 1 material and it has all of the documents he previously sent,
2 him being aware of his information is not of material. He also
3 indicated that I didn't intend to provide real intel. He's --
4 I'm not, as the record will show, interested in joining this
12:57 5 organization in its battlefield capacity, in its -- and, with
6 regards material support, providing the classified or
7 restricted manuals.

8 As is in the record, the defendant was shown on
9 May 3rd, 2010, both restricted manuals which were later sent.
12:57 10 However, the record will also show that when this CHS is
11 mentioning "restricted," he's bending over, away from the
12 defendant, picking up the documents, after which the defendant
13 doesn't ask for the document, he doesn't want to see it, he
14 doesn't become excited and want to take it with him. He
12:58 15 just -- he doesn't even look -- he doesn't even -- he doesn't
16 even ask for it.

17 You know, this individual offered the defendant
18 an opportunity to leave what the defendant had, in his mind,
19 concluded to be harassment. And he saw -- the defendant saw a
12:58 20 way out and accepted assistance from the wrong person. And
21 that led to the night of May 30th.

22 And with respect to going to a training camp, the
23 record will reflect that at first the CHS told the defendant he
24 would be trained to do certain things and he never explained
12:59 25 what that was. And then, the night of the arrest, he says,

12:59 1 "You might shoot, but I don't want you to say 'no.'" He left
2 me the option. He didn't force me to do it, and he never made
3 it appear as though I had to do it.

4 He -- and the record is replete with references
12:59 5 where he says, "You don't have to do anything you don't want to
6 do," which is, to my understanding, "I will help you, but I'm
7 not requiring of you anything." I never -- and the record will
8 show I never pledged allegiance to the organization. I never
9 pledged to do anything material, offer any expert opinion,
12:59 10 advice derived from scientific knowledge. In spite of the fact
11 that he mentions frequently that I had computer knowledge, I
12 never offered that expertise.

13 I offered information off of Google. And I will
14 say that with the global -- with respect to the global jihadi
01:00 15 movement and the Salafi-Jihadi ideology, as the record shows
16 and as Mr. Kohlmann pointed out, there are differences. There
17 are people that within the Salafi-Jihadi movements agree with
18 the concepts like Sharia law and the Islamic state, which are
19 controversial. However, those same groups don't agree with
01:00 20 committing terrorism -- i.e., suicide attacks and things like
21 9-11 -- to carry out or to -- to bring about that ultimate
22 goal.

23 And having said that, when I saw this person
24 willing to help me, it made me unsure as to whether this person
01:01 25 was really a part of something that would do these kinds of

01:01 1 acts. We never talked about terrorism attacks. We never
2 talked about attacking in the style of 9-11. We talked about
3 in -- and the most we talked about, which is not material
4 support, are drones, the machine.

01:01 5 So, I will say that I made that error and I
6 trusted this individual and this individual led me to think
7 that I was taking those items to a brother and a -- and his
8 good friend. And as the record will show, he's referred to --
9 "brother" is just a term used for any -- any Muslim. It
01:02 10 doesn't -- it isn't just a fighter or a person who's in
11 al-Qaeda. It's anyone. It doesn't reflect this specific --
12 "this is the code for terrorists," and there's never any
13 mention of that in the record. So, they haven't proved that I
14 intended to give these items to al-Qaeda in the Arabian
01:02 15 Peninsula.

16 I'm finished.

17 THE COURT: You're complete?

18 THE DEFENDANT: Yes. Yes, sir.

19 THE COURT: All right. You used right at 10 minutes.

01:03 20 Government, you need to address some of those
21 points.

22 MR. McINTYRE: Rather quickly, your Honor.

23 THE COURT: Well, I'm just saying --

24 MR. McINTYRE: Yes.

01:03 25 THE COURT: I'm asking you to do that.

01:03

1 MR. McINTYRE: Oh, okay.

2 THE COURT: Okay?

3 MR. McINTYRE: Yes, your Honor.

01:03

4 THE COURT: Address those points if you think it's
5 necessary. And you've got -- you've used seven minutes and 20
6 seconds. And you'll get a five-minute warning, and I'll let
7 you know when you get close.

8 You want a two-minute warning now?

9 MR. McINTYRE: That would be fine, your Honor.

01:03

10 THE COURT: Okay. I'll give you a two-minute warning
11 on when your time is up.

12 All right. Now, address, if you think it's
13 necessary, some of the points Mr. Bujol raised. But, you know,
14 it's your time. You've used exactly one half of your time now.

01:03

15 Go on.

16 MR. McINTYRE: Yes, your Honor.

17 The term "brothers" was commonly used as a code
18 word, like the other code words that were used in this case, to
19 describe AQAP, members of AQAP.

01:03

20 THE COURT: "AQAP" is?

21 MR. McINTYRE: Al-Qaeda in the Arabian Peninsula.

22 In fact, I mean, there's -- there's a portion
23 on -- of a transcript on May 3rd of 2010 where he goes into
24 great detail -- this is on Page 17 -- Bujol does, about --

01:04

25 THE COURT: Page 17 of?

01:04 1 MR. McINTYRE: It's 323B.

2 THE COURT: Thank you.

3 MR. McINTYRE: Yes, your Honor.

4 He goes into great detail how he's preparing
01:04 5 himself to live and die with the brothers and how he has to be
6 firm. And he talks about those who sit and stay behind and get
7 on their computer and spout jihadi ideas, but it takes -- when
8 it's time to really do what you need to do, which is live and
9 die with the brothers, in his view, that it takes steadfastness
01:04 10 and preparation and that he's been working on himself mentally
11 to be able to go and live and die with the brothers, which is
12 al-Qaeda in the Arabian Peninsula.

13 As I pointed out before -- and this, again, is in
14 the record, 324 -- Exhibit 324, Page 31 -- the confidential
01:05 15 source, before he takes him to the ship, says, "They're going
16 to take you out and teach you to shoot." So -- and the record
17 is replete with those types of examples, that makes the story
18 that he thought he was going to jump on a ship and go to
19 language school ludicrous.

01:05 20 And it's ludicrous on its face. He believed,
21 based on what he said, what he was told, and what the video
22 said for his wife, that the confidential source was a member of
23 al-Qaeda in the Arabian Peninsula and that he was going over
24 there to meet Abu Bakr and take restricted military manuals,
01:05 25 cash, military equipment, compasses, things like that, over to

01:05 1 Abu Bakr. And, in fact, before he gets on the ship, to show
2 that he wasn't just trying to get a ride to go to language
3 school on a ship, he repeats -- right before he gets on the
4 ship, asks the source, "Where is the number for Abu Bakr?"

01:05 5 Where the number for Abu Bakr? I've got to get in touch with
6 him before I get on the ship."

7 THE COURT: What's the requirement under the wording
8 of the indictment that's necessary for the government to show
9 beyond a reasonable doubt? We've heard a lot of testimony.

01:06 10 What's the wording that's necessary?

11 MR. McINTYRE: Your Honor, the elements of the crime
12 are that the defendant knowingly attempted to provide material
13 support or resources; the defendant believed that the support
14 or resources was going to an organization commonly known as
01:06 15 al-Qaeda in the Arabian Peninsula; that the organization
16 commonly known as al-Qaeda in the Arabian Peninsula previously
17 had been designated as a foreign terrorist organization by the
18 secretary of state; that the defendant knew that one or more of
19 the following conditions existed: that the organization

01:06 20 commonly known as AQAP had been designated a foreign terrorist
21 organization or that the organization commonly known as AQAP --

22 THE COURT: You don't have to read the whole thing.

23 MR. McINTYRE: -- engages in terrorist activity.

24 THE COURT: That's the full indictment. Is that
01:06 25 correct?

01:06 1 MR. McINTYRE: That's the elements of the offense,
2 yes, your Honor.

3 THE COURT: The elements of the offense.

4 MR. McINTYRE: Yes, your Honor.

01:07 5 THE COURT: And what about --

6 MR. McINTYRE: And, clearly -- I'm sorry.

7 THE COURT: Go on. Those are the elements of the
8 offense.

9 MR. McINTYRE: Yes. And, clearly, the defendant knew
01:07 10 that al-Qaeda in the Arabian Peninsula committed terrorist acts
11 and committed acts of violence, because he sent a multitude of
12 e-mails to the confidential source about al-Qaeda in Yemen and
13 al-Qaeda in the Arabian Peninsula.

14 And, in fact, the defendant talks -- the
01:07 15 defendant is the first one to bring up al-Qaeda in the Arabian
16 Peninsula to the confidential source, where he's described,
17 wrongly, a drone attack on al-Qaeda in the Arabian Peninsula,
18 where he claims all these children were killed, when in fact
19 the expert testified that they took out militants for al-Qaeda
01:07 20 in the Arabian Peninsula.

21 And, further, your Honor, as I was saying before,
22 the fact that he is claiming he was going to go to language
23 school is ludicrous. He's getting on a ship with a recruiter
24 with al-Qaeda in the Arabian Peninsula. He -- did he think he
01:08 25 was simply going to arrive overseas and that al-Qaeda in the

01:08 1 Arabian Peninsula was going to say, "Yeah, we expended all
2 these resources and all this effort to get this jihadi over
3 here to commit terrorist acts and train him but he's decided he
4 wants to go to language school so we're just going to let him
01:08 5 go to language school"? That's ludicrous.

6 He had the intention and would have, once he
7 arrived over there, been trained exactly like he was told, to
8 shoot and to commit terrorist acts.

9 One of the things that I wanted to point out to
01:08 10 you were the defendant claims he sent -- "Oh, I just sent these
11 military manuals. And, yeah, I gave this al-Qaeda operative
12 advice on air force bases and drones. But I never personally
13 tried to encourage anyone to commit a violent act." If you'll
14 look at Government's Exhibit 261, this is from the defendant to
01:08 15 the confidential source just a few days before he gets on the
16 ship, where he's twice been told this is an AQAP operative.
17 And it's titled, "Take a trip to a local zoo."

18 And what he says is, "I've been thinking maybe if
19 you or any friends and family" -- and the only friends and
01:09 20 family that the confidential source had were his brothers in
21 AQAP -- "want to go to the zoo" -- the "zoo" is the air force
22 base -- "there are plenty to choose from, with lots of dogs" --
23 "dogs" being soldiers that are at the air force base -- "and
24 elephants," which are the drones. "View the attachment. Any
01:09 25 questions? Send me an e-mail."

01:09 1 And if you look at the attachment, your Honor,
2 which is 262, it's a guide to air force installations
3 worldwide. Knowing the confidential source is a member of
4 AQAP, he is encouraging AQAP members to attack air force bases
01:09 5 worldwide and refers to American soldiers as "dogs."

6 THE COURT: You've got two minutes left.

7 MR. MCINTYRE: Yes, your Honor. And I would like to
8 briefly go back to the "For My Wife" video because I think it's
9 very important throughout the course of this trial that he's
01:10 10 tried to define these terms "hijrah," "jihad," to mean things
11 that don't involve armed conflict.

12 Once again, when he was talking to his wife, in
13 the most private moment -- and in fact, left -- he left his two
14 infant children, his wife, and just flat out walked out the
01:10 15 door with a backpack at 1:00 o'clock in the morning, walked a
16 mile, determined to meet up with an AQAP representative and go
17 overseas.

18 In the video it's very clear -- it's almost like
19 a martyrdom video -- there's signs of heaven and he's saying
01:10 20 his wife may or may not see him again and he leaves the
21 moniker, "To be continued at the end." That would be the most
22 truthful he is about the terms that he commonly uses in these
23 conversations with the confidential source.

24 He says many times, "I want to commit hijrah."
01:11 25 He talks about jihad. He talks about the as-sadiqeen, which is

01:11 1 the most righteous. In every picture that's associated with
2 as-sadiqeen, jihad, or hijrah is either a convicted terrorist,
3 a member of a terrorist organization, or a militant with a
4 rocket propelled grenade. That's his definitions. That's what
01:11 5 he wanted to do. That was essentially his last will and
6 testament, his most private moment to the only people in the
7 world that he probably cared about and which he didn't care
8 about very much, because he left and jumped on a ship in the
9 middle of the night.

01:11 10 That's all we have, your Honor.

11 THE COURT: Thank you. All right. Let me take --

12 THE DEFENDANT: Your Honor --

13 THE COURT: No, sir. That's it. That's the
14 frustration, as we all know, being a defense lawyer. You can't
01:12 15 rebut the rebuttal. That's the end of the -- end of it.

16 All right. There are four exhibits that were
17 entered into evidence by Mr. Bujol. So, when I leave, we need
18 to make sure we have that. So, if the marshals will give us a
19 moment or so. We need to make sure we have that in the record.
01:12 20 And all the government's exhibit are in evidence.

21 You need not move your stuff unless you want.
22 Just neaten it up a little bit. I've got a full docket on
23 Monday morning. And nobody is going to disturb it. We have --
24 I have all day tomorrow, Saturday, and Sunday to look through
01:12 25 all of the exhibits.

01:12 1 I have taken my own personal notes, and I can get
2 the exhibits if I need to. I'm going to announce the verdict,
3 the guilt or innocence verdict, on Monday. And the time I'm
4 setting has a reason. That way, no one will be hanging around
01:13 5 and stalling around. Because I have civil cases that may or
6 may not -- there's no need at this point to move it off. It
7 will also give me some opportunity, after the weekend, if
8 I -- you know, I don't have to come down each day. If I make
9 some notes at home, I can come down that morning.

01:13 10 So, the verdict in the case will be handed down
11 by the Court at 3:00 p.m. on Monday. And that completes all
12 the testimony and the summation of both sides. The first thing
13 we need to do with the marshal service, he needs to stay here a
14 few minutes and make sure we have those four exhibits.

01:13 15 You need to get all yours together with Ellen
16 after we make sure Mr. Bujol's are here. And I will see you
17 all Monday at 3:00 p.m. We'll stand adjourned.

18 *(Proceedings recessed for evening)*

19 * * * * *

20 COURT REPORTER'S CERTIFICATION

21 I certify that the foregoing is a correct transcript from
22 the record of proceedings in the above-entitled cause.

23 Date: April 3, 2012

24 /s/ Cheryll K. Barron

25 Cheryll K. Barron, CSR, CMR, FCRR
Official Court Reporter